Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	WC Docket No. 07-245
Implementation of Section 224 of the Act;	)	
Amendment of the Commission's Rules and	)	RM - 11293
Policies Governing Pole Attachments	)	
	)	RM-11303
	)	

COMMENTS OF IDAHO POWER COMPANY

IDAHO POWER COMPANY

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UNITED STATES OF AMERICA
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I. INTRODUCTION

Pursuant to sections 1.415 and 1.419 of the Federal Communications Commission's ("FCC" or "Commission") Rules, Idaho Power Company ("Idaho Power," or "the Company") hereby submits these Comments to address the questions and issues raised in the Commission's October 31, 2007 "Notice of Proposed Rulemaking" ("NPRM") regarding the amendment of the Commission's rules and policies governing pole attachments.

Idaho Power Company is an investor-owned utility involved in the generation, purchase, transmission, distribution and sale of electric energy. It serves a 24,000-square-mile area in southern Idaho and eastern Oregon with an estimated population of 943,000.

II. THE FCC SHOULD ADOPT A SINGLE RATE FOR ALL JURISDICTIONAL ATTACHMENTS

A. Legal Authority to Provide for a Single Rate

The Commission seeks comment on "whether cable operators should continue to qualify for the cable rate where they offer multiple services in addition to cable service" [1] and tentatively concludes that a single rate should apply to all providers of broadband services.[2] The Commission also seeks comment on "the advantages and disadvantages of a unitary rate for all providers of broadband Internet access service, and, as discussed below, the appropriate level of such rate."[3]

Idaho Power agrees with the Commission that the "once-clear distinction between 'cable television systems' and 'telecommunications carriers' has blurred as each type of company enters markets for the delivery of services historically associated with each other."[4] Moreover, with respect to space used on poles and structural loading, it makes no difference what type of service is being provided by the attached cable. For these two reasons, the Commission should apply a single rate formula to all attachments under its jurisdiction.

Section 224(d)(3) states that the cable formula "shall apply to the rate for any pole attachment used by a cable television system solely to provide cable service." Therefore, when a cable television service provider uses a pole attachment to provide services other than cable television service, the cable formula does not necessarily apply. If the cable

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[1] NPRM at ¶ 9

[2] NPRM at ¶ 22

[3] NPRM at ¶ 9

[4] NPRM at ¶ 5

system provides telecommunications services in addition to cable television service, its attachments are then subject to the telecommunications formula. If the cable system does not provide telecommunications service but provides some other type of service, such as information service, neither formula is binding on the Commission. Instead, the Commission is required only to ensure that the resulting rate is just and reasonable.

The Commission also seeks comment on "whether all telecommunications carriers must pay the telecom rate, regardless of what other services they may provide over their attachments."[5] As the Commission acknowledges, the telecommunications rate formula applies to any telecommunications carrier that provides telecommunications services. Therefore, any single rate formula that includes telecommunications carriers must, at the very least, result in rates equal to those calculated using the telecom rate formula.

For this reason, the Commission is correct to question Time-Warner Telecom's position that "the cable rate should apply to all pole attachments, particularly because the cable rate does not include an allocation of the cost of unusable space."[6] Since the telecom rate formula applies to all jurisdictional providers of telecommunications services, the Commission does not have authority to apply the cable formula to any entity that is a jurisdictional provider of telecommunications services.

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[5] NPRM at ¶ 8

[6] NPRM at ¶ 9

B. The Formula Should Apply to All Jurisdictional Attachments

Idaho Power strongly believes that a single rate formula should apply to all jurisdictional attachments. For reasons stated earlier, the rate calculation formula should be the same for all attachments subject to the FCC's jurisdiction, regardless of the type of communication services provided by these attachments. Likewise, Idaho Power agrees with the Commission that the distinction between services provided by cable television service providers and telecommunications service providers is no longer clear. In fact, for all practical purposes, it is difficult to argue that a distinction exists at all between these types of services. This is especially true from the perspective of an electric utility. Unless the cable television service provider notifies the utility of which type of services it is providing, the utility has no way of knowing. In addition, as stated earlier, the type of service provided makes no difference regarding the amount of pole space required for the attachments and the structural load these attachments apply to the pole.

C. No FCC Rate Formula Can Apply to Non-Jurisdictional Entities

The Commission's rate calculation formula can apply only to jurisdictional attachments. Non-jurisdictional attachments such as those owned by Incumbent Local Exchange Carriers (ILECs) and wireless carriers are not subject to FCC jurisdiction under Section 224 and, therefore, cannot be subject to the Commission's rate formula.

III. THE COMMISSION SHOULD ELIMINATE SUBSIDIES THAT IMPEDE COMPETITION

The Commission seeks comment on "the Commission's ability to modify how the cable and telecom rates are applied."[7] The Commission currently has the statutory

[7] NPRM at ¶ 8

authority to improve the way the telecommunications rate formula is implemented to substantially reduce, if not completely eliminate, subsidies from electric consumers.

It is widely accepted that the cable television rate formula results in electric consumers subsidizing the attachments of cable television service providers. Although the telecommunications rate formula was adopted to minimize or eliminate these subsidies, with its current presumptions and implementation, it too results in subsidies. Unfortunately, these subsidies impede fair competition among communications service providers, act as a barrier to competitive communication deployment to rural areas and impose undue burdens on electric consumers.

Therefore, in addition to applying the telecommunications formula to all jurisdictional attachments, the Commission must also modify the way the formula is implemented. Idaho Power agrees that presumptions and general rules are useful in determining rates, terms and conditions that are fair, just, and reasonable. However, this is only true if the presumptions and general rules accurately reflect actual conditions and do not favor the interests of communication service providers over the interests of the utility and its electric customers. Unfortunately, many of the presumptions and rules currently being implemented do not reflect actual conditions and in fact result in substantial subsidies to jurisdictional attachments at the expense of the electric utilities. To eliminate these subsidies, Idaho Power strongly urges the Commission to make the following modifications to the presumptions and general rules relied upon in calculating pole attachment rates under the telecommunications formula: (1) allocate the communication worker safety zone space to communication attachments, not to the utility, as this space exists to protect the communication worker; (2) allocate the space

used to accommodate the sag of communication cables to the communication attachments; (3) lower the presumed numbers of attaching entities to reflect actual prevailing conditions and to eliminate the barrier to rural deployment; (4) do not count the utility as an "attaching entity" in calculating the allocation of "other than useable" space; (5) establish a presumption that executed pole attachment agreements are just and reasonable.

In short, Idaho Power strongly urges the commission to simply implement a single pole attachment rate formula that is non-discriminatory and fairly allocates pole costs without the subsidy from electric consumers. Idaho Power's motivation for such an approach is not financial. In fact, as explained below, revenues from jurisdictional communication attachments serve only to reimburse its electric customers for the reduction in pole plant that is available to serve their electric needs. Instead, Idaho Power's motivation is founded on the premise that the Company has an obligation to be fair and reasonable with all of its customers. Whether its customers are electric consumers or communication licensees, Idaho Power seeks to charge fair and reasonable rates that are not subsidized by other customers.

IV. POLE ATTACHMENT REVENUES MERELY REIMBURSE ELECTRIC CONSUMERS

A basic review of utility ratemaking will help illustrate the critical point that the utilities and their shareholders do *not* accrue pole attachment revenues to the benefit of regulated utilities and their shareholders, but rather serve to offset the amount their electric customers pay in rates. In effect, pole attachment revenues reimburse electric customers for the pole plant that is no longer available to serve them.

State Public Utilities Commissions (PUCs) set rates for regulated utilities based upon the amount of annual revenue that the utility is entitled to receive as determined in the utility's last rate case. This annual amount, or revenue requirement, is a function of the value of two components:

1. Annual operating expenses (which include operation and maintenance expenses; depreciation; and various taxes); and

2. Return on Net Rate Base: (that is, the value of the plant less depreciation, deferred income taxes, etc. multiplied by an Authorized Rate of Return).

Once the PUC has valued these two components, the PUC authorizes the utility to obtain a specified amount of revenue based upon the following formula:

Operating Expenses + Return on Net Rate Base = Revenue Requirement.

The "revenue requirement" may be acquired in two ways: (1) energy sales, or (2) revenues from "other operating operations". Types of "other operating revenues" include such things as facilities charges, transmission services, substation rental equipment, etc. Pole attachment fees are also included as a type of "other operating revenue".

Financially, it is a zero sum game; any dollar the utility receives from "other operating operations" is one less dollar that can be charged for energy sales to utility customers.

For example, if a PUC authorizes a revenue requirement of $1,000,000 and the utility expects to earn $100,000 from "other operating operations", they are authorized to structure their retail tariffs to receive $900,000 from energy sales. However, if the utility expects to earn $200,000 from "other operating operations", they would only be authorized to structure their retail tariffs to receive $800,000 from energy sales. Thus, the idea that utilities enjoy profits from joint use pole attachments is unfounded.

A related concern often raised by the cable operators and telecommunications carriers is that the utilities are somehow being compensated several times over for their investment in utility poles. This concern about "double dipping" is based upon a misunderstanding of basic ratemaking principles.

When a hard asset such as a utility pole is purchased, it becomes part of the utility's rate base. Once allowed into "rate base" the pole is paid for by the utility's customers in accordance with a depreciation schedule for the pole approved by the PUC. In other words, the PUC will calculate the average life of a utility pole and include the cost in rates spread over the average life of a pole. The pole will not be paid for until the end of the pole's useful life, at which point a replacement pole will be purchased and the whole process repeats itself. Thus, assuming that the PUC's estimates are sound, the rates paid by customers will reimburse the utility for the estimated cost of the pole, plus an authorized rate of return—no more and no less.

Moreover, the utility's customers are required to pay for a utility asset in its entirety over time unless there is another non-utility user to help offset the costs. Any payment from a non-utility source helps offset the utility customers' contribution. Therefore, there is no duplication of compensation for utility assets.

In summary, the utility and its shareholders *do not* receive profits (or losses) or double recovery from revenues received from pole attachment fees. The Company's overriding concern *is not* economic self-interest. Rather, the Company's interest is in finding a fair and balanced way of charging all users of the Company's assets an appropriate portion of the revenue requirement. In particular, the Company wishes to protect its "captive" customers from being forced to shoulder costs more appropriately allocable to others.

V. BENCHMARK FOR FAIR ALLOCATION OF SPACE AND POLE COSTS

In order for the Commission to evaluate the effectiveness of its efforts to implement the telecommunications rate formula in a way that eliminates subsidies and barriers to fair competition, it must first have a benchmark that identifies the fair division of pole costs and the associated attachment rate. In order to accomplish this, the Commission must compare and contrast two scenarios: 1) a utility pole with no joint use attachments; 2) a utility pole with joint use attachments.

Under the first scenario, all of the useable space on the pole is available for benefit of the utility's electric customers. This useable space includes all of the pole that is located above the minimum required clearance above the ground (presumed to be 18 ft). For the presumed 37.5 foot pole that is buried 6 feet in the ground, the useable space equals 13.5 feet.

Although the electric conductors of the power utility sag between poles, it is not accurate to assume that because of this sag, in the absence of joint use attachments, the electric utility cannot utilize all of the pole that is above the 18 foot minimum ground clearance. Certainly, conductors would have to be attached at appropriate heights to accommodate sag and still maintain the minimum ground clearance between poles, but this is not true for pole-mounted equipment such as risers, transformers, reclosers, capacitors, etc. These items can be installed on the pole at minimum ground clearance height.

In this scenario, the electric customers are charged the full "adjusted pole cost" (Net Bare Pole Cost multiplied by the Carrying Charges). The allocated cost per useable foot of pole is then calculated by dividing the adjusted pole cost by the useable space. If a pole had a calculated adjusted pole cost of $100.00 and 13.5 feet of useable space, the

electric customers would be charged $7.41 per foot of useable space. *This value represents the basis for determining if a subsidy occurs.* If, after joint use attachments are added to the pole, the electric customers' cost per foot of pole remaining for their benefit exceeds this value, then the electric customers are subsidizing the joint use attachments.

Under the second scenario, joint use attachments are added to the pole. In order to determine the space used by the joint use attachments, one needs only to calculate the useable space remaining for the benefit of the electric customers and subtract this value from the useable space determined in the first scenario. For example, if the utility averages one (1) communication attachment on the typical pole described in the first scenario, then the space remaining for the benefit of the electric customers is only 8.17 feet. The difference of 5.33 feet represents both the reduction of space available to benefit the electric customers and the space used by the communication attachment. This value was calculated by combining the 40 inch (3.33ft) Communication Worker Safety Zone, which is required by the National Electric Safety Code (NESC) to protect the communication worker -- not the utility worker, with the presumed 2 feet needed to accommodate the sag of the communication cable. In other words, in order to maintain the minimum ground clearance of 18 feet in the middle of the span, the communication cable must be attached to the pole at 20 feet above the ground. When a communication service provider uses space above the minimum ground clearance to accommodate the sag of their cable, the electric utility is no longer able to use this same space to install equipment that would benefit their electric customers. In addition, the communication attachment uses an additional 3.33 feet for the protection of the communication worker

for a total reduction in electrical supply space of 5.33 ft. In order to fairly allocate the adjusted cost of these poles between the electric customers and the communication service provider, the rate charged would be $7.41 per foot (the same rate charged to electric customers) or $39.48 per communication attachment. *Anything less would result in a subsidy from the electric customers.*

However, if the utility averages two (2) communication attachments per pole, the two attaching entities would evenly split the cost of the total reduction of space available for the electric customers. In addition to the sag allowance and Communication Worker Safety Zone as discussed above, this reduction would also include the presumed one foot of separation required between communication attachments. The resulting reduction of 6.33 feet of space would be equally split between the two attachments for a cost of $23.44 per attachment. As the average number of communication attachments per pole increases, the resulting space used for communication attachments (reduction in space available to electric customers) increases at the rate of 1 foot per additional attachment. The following formulas are used to calculate this fair allocation of space and costs.

$$SpaceUsed = \frac{(Ht - GroundClearance) + CWSC + (N - 1)}{N}$$

Where:

Space Used = the Authorized Space charged for each joint use attachment (ft)

Ht = attachment height above the ground of the lowest communication cable (ft)

Ground Clearance = minimum required ground clearance (ft)
CWSC = Communication Worker Safety Zone Clearance (ft)
N = average number of communication attachments per pole (each)

Where the "Useable Space" includes all of the pole located above the minimum required ground clearance, the rental rate for each attachment is then calculated by the following formula:

$$Rate = PoleCost \times CarryingCh\arg e \times \frac{SpaceUsed}{UseableSpace}$$

The allocation of space used for joint use (as calculated above) and the resulting rental rate are the minimum values required to prevent the communication attachments from being subsidized by the electric customers.

Given the conditions discussed in the scenarios above, the following tables outline the differences in space allocated to communication attachments and the associated attachment rate using both the fair allocation benchmark described above and the FCC telecom formula as it is currently being implemented. Values shown in bold indicate that the electric customers are subsidizing communication attachments.

Table 1: Space Used for Various Number of Joint Use Attachments

Average Communication Attachments per Pole	Space Remaining for Rate Payers' Benefit (ft)	Fair Allocation Benchmark Space Used for Joint Use (ft)
0	13.5	0
1	8.17	5.33
2	7.17	6.33
3	6.17	7.33
4	5.17	8.33
5	4.17	9.33
6	3.17	10.33
7	2.17	11.33
8	1.17	12.33

Table 2: Comparison of Joint Use Rental Rates per Attachment

Average Communication Attachments per Pole	Fair Allocation Benchmark	FCC Telecom Formula
0	$0.00	$0.00
1	$39.48	**$24.00**
2	$23.44	**$16.89**
3	$18.10	**$13.33**
4	$15.43	**$11.20**
5	$13.82	**$9.78**
6	$12.75	**$8.76**
7	$11.99	**$8.00**
8	$11.42	**$7.41**

As shown in Table 2 above, the telecommunications formula as it is currently implemented results in pole attachment rates that are well below those necessary to avoid subsidies from the electric consumers. These subsidies are largely due to the disproportionate allocation of useable space that is attributed to each attachment. While one communication attachment requires 5.33 feet of useable space as discussed earlier, the current implementation of the telecom formula only attributes 1 foot of useable space to this attachment. Again, to eliminate these subsidies, Idaho Power strongly urges the Commission to make the following modifications to the presumptions and general rules relied upon in calculating pole attachment rates under the telecommunications formula: (1) allocate the communication worker safety zone space to communication attachments, not to the utility, as this space exists to protect the communication worker; (2) allocate the space used to accommodate the sag of communication cables to the communication attachments; (3) lower the presumed numbers of attaching entities to reflect actual prevailing conditions and to eliminate the barrier to rural deployment; (4) do not count the utility as an "attaching entity" in calculating the allocation of "other than useable"

space; (5) establish a presumption that executed pole attachment agreements are just and reasonable.

VI. IDAHO POWER'S PROPOSED MODIFICATIONS

A. Allocate the Communication Worker Safety Zone Space to Communication Attachments, Not to the Electric Utility

Currently the FCC presumes that the 40-inch communication worker safety zone is usable space, used by the electric utility. Thus the electric utility must pay for the entire portion of pole costs attributable to the safety space. However, the communications worker safety zone space exists solely for benefit and protection of the employees of the communication service provider, who, unlike employees of the utility, are not certified to operate near high voltage lines. Indeed, the communications worker safety zone does not even exist until the first communication attachment is made. Before the attachment, that space is available for the utility's use. Notwithstanding the exceptions required by the National Electric Safety Code (NESC) to allow street lights and traffic signals for public safety, after the first attachment is made, that space becomes unavailable for use by the utility. It thus makes sense to include the cost of that space in the portion of the pole that is used for the communication attachments.

B. The Space Used to Accommodate the Sag of Communication Cables Should Be Allocated to Communication Service Providers, Not the Electric Utility

As stated earlier, in the absence of joint use attachments, the electric utility can utilize all of the pole that is above the minimum ground clearance (presumed to be 18 feet). Certainly, electric conductors would have to be attached at appropriate heights to accommodate sag and still maintain the minimum ground clearance between poles, but this is not true for pole-mounted equipment such as risers, transformers, reclosers,

capacitors, etc. These items can be installed on the pole at minimum ground clearance height. However, when a communication service provider uses space above the minimum ground clearance to accommodate the sag of their cable, the electric utility is no longer able to use this same space to install equipment that would benefit their electric customers. Assuming the communication cable sags 2 feet in a 200-foot span, the communication service provider uses an additional 2 feet of the useable pole space to make a compliant pole attachment. This 2 foot space is used solely for the benefit of the communication service provider. For this reason, this space should be allocated to the communication attachments.

C. The Presumed Number of Attachments Should Be Lowered to Reflect Actual Prevailing Conditions

The Commission's current regulations have rebuttable presumptions regarding the number of attaching entities. These presumed values do not accurately reflect actual conditions. The purpose of a presumption should be to reflect as accurately as possible the average number of "attaching entities" as referenced in the telecommunications formula language of section 224(e). However, the presumptive averages of three and five for rural and urban areas, respectively, are substantially higher than the actual averages Idaho Power currently experiences. In fact, it is Idaho Power's experience that an average of only 2.4 attachments exists on its jointly used poles. This value includes poles in both urban and rural areas with at least one communication attachment. In addition this value includes the utility as one of the attachments.

In addition to overstating actual conditions, the Commission's presumptions establish a barrier for rural deployment of communication systems. In essence, a higher average number of pole attachments results in a lower pole attachment rate. By

presuming more attachments in urban areas, the Commission in effect erects a barrier to rural expansion by establishing higher pole attachment rates in rural areas. This runs counter to the Commission's goal of promoting rural broadband deployment.

To more accurately reflect actual conditions and to eliminate the barrier to rural expansion of communication systems, Idaho Power urges the Commission to modify its presumptions to 2.5 attachments per pole (including the utility) for both rural and urban areas.

D. The Utility Should Not Be Counted as an Attaching Entity in Calculating the Allocation of "Other Than Useable Space"

The Commission should only include attachments made by cable television service providers and telecommunications service providers in determining the number of attaching entities on a utility pole. The utility itself should not be included for this calculation as 1/3 of the "other than useable" portion of the pole is already allocated to the utility. In addition, as defined by Section 224, "pole attachment" refers to an attachment by "a cable television system or provider of telecommunications services to a pole, duct, conduit, or right-of-way owned or controlled by a utility." Clearly, this definition does not include the utility itself.

E. Executed Pole Attachment Agreements Should Be Presumed Just and Reasonable

The Commission notes that "under current Commission rules, an attacher may execute a pole attachment agreement with a utility, and then later file a complaint challenging the lawfulness of a provision of that agreement." [8] If a communication service provider feels a pole attachment agreement is unlawful or unsatisfactory, it should

[8] NPRM at ¶ 56

not enter into that agreement. If, however, through the negotiation process a utility and a communication service provider agree on the rates, terms and conditions of that pole attachment agreement, it must be understood that the rates, terms and conditions agreed upon are considered just and reasonable. By virtue of the fact that both parties entered into the agreement in good faith, the Commission should adopt the presumption that an executed pole attachment agreement is just and reasonable.

VII. COMPARISON OF PROPOSED FORMULA IMPLEMENTATION

By approving the modifications to the implementation of the telecommunications rate formula proposed by Idaho Power, the Commission will, while acting within its jurisdiction and maintaining the integrity of Section 224, provide an environment that is nondiscriminatory in nature and fair in its allocation of costs while reflecting actual industry conditions and removing barriers to rural expansion. As outlined in the following table, the proposed modifications result in a single rate charged for all jurisdictional attachments, regardless of their location, that minimizes subsidies from electric consumers.

Using the same assumptions outlined earlier, Table 3 below outlines the pole attachment rates under three calculation methods: 1) fair allocation benchmark; 2) the current implementation of the telecom formula; 3) modified implementation of the telecom formula as proposed. As with previous tables, values resulting in the subsidizing of communication attachments are shown in bold type.

Table 3: Comparison of Joint Use Rental Rates per Attachment

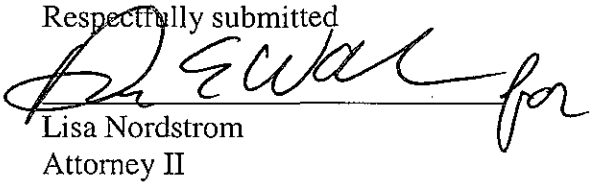
Average Communication Attachments per Pole	Fair Allocation Benchmark	FCC Telecom Formula	Proposed Mods to FCC Telecom Formula
0	$0.00	$0.00	$0.00
1	$39.48	**$24.00**	**$35.55**
2	$23.44	**$16.89**	**$22.66**
3	$18.10	**$13.33**	**$17.18**
4	$15.43	**$11.20**	**$14.09**
5	$13.82	**$9.78**	**$12.09**
6	$12.75	**$8.76**	**$10.69**
7	$11.99	**$8.00**	**$9.65**
8	$11.42	**$7.41**	**$8.85**

As shown in Table 3, the proposed modifications to the implementation of the telecom formula provide a substantial improvement over the current implementation. Although electric consumers would still subsidize communication attachments under Idaho Power's proposal, this subsidy is substantially less than is currently being experienced. In fact, at the average number of pole attachments currently experienced, the difference between pole attachment rates resulting from the modified implementation of the telecom formula and the fair allocation benchmark is approximately $0.78 per communication attachment (approximately 3% of the fair allocation benchmark).

VIII. CONCLUSION

Idaho Power respectfully requests that the Commission consider these Comments and adopt rules consistent with them.

Respectfully submitted



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